Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

CORRECTION DECISION

Dispute Codes MNDCT, MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Section 78 of *Residential Tenancy Act* enables the Residential Tenancy Branch to correct typographic, grammatical, arithmetic or other similar errors in a decision or order, or deal with an obvious error or inadvertent omission in a decision or order.

In my original decision I recorded the following testimony and made the following finding:

> The tenant testified that both landlords were individually served a notice of dispute resolution package by registered mail in February of 2018. The tenant testified that both packages were addressed to the family home. The tenant testified that landlord S.H. did not provide him with a new address for service. Landlord D.H. confirmed receipt of the dispute resolution package on February 8, 2018. I find that the landlord D.H. was served with this package on February 8, 2018, in accordance with section 89 of the *Act.*
>
> Landlord S.H. testified that he did not receive the dispute resolution package and only learned of today's hearing when the Residential Tenancy Branch sent him an e-mail reminding him of the service deadlines. Landlord S.H. testified that he is separated from landlord D.H. and was not living with her when the dispute resolution packages were served. Landlord D.H. testified that she did not receive a dispute resolution package addressed to landlord S.H. I find that landlord S.H. was not served in accordance with section 89 of the *Act* and I therefore dismiss the tenant's claims against landlord S.H. with leave to reapply.

In the Request for Correction, the applicant requested that the dismissal of the claim against landlord S.H. be reversed as the dismissal of the claim against landlord S.H. had a negative impact on the applicant. The applicant stated that the arbitrator did not adequately investigate landlord S.H.'s claim that he did not receive the tenant's notice of dispute resolution package.

The original decision is based on the evidence submitted in the application and the testimony of both parties. An application for correction is not the appropriate forum in which to have your claim re-heard or to submit evidence that was not included in the original application.

I decline to make any correction and I confirm my original decision and order.

In my original decision I recorded the following testimony and made the following finding:

> The landlord testified that she served the tenant with a Two Month Notice to End Tenancy for Landlord's Use, with an effective date of January 31, 2018 (the "Two Month Notice") in November of 2017 but could not recall if she posted it in the tenant's mailbox or if she hand delivered it. The tenant testified that the landlord personally served him with the Two Month Notice on November 30, 2017. The Two Month Notice was entered into evidence.
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> The Two Month Notice stated the following reason for ending the tenancy:
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> - The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).
>
> The landlord testified that after she separated from landlord S.H., he did not provide her with the tenant's rent money and that without that income, she could not afford to keep the tenant in the suite because the costs associated with having a suite were not covered….
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> Both parties agree that the tenant was not provided with one month's free rent….
>
> Based on the testimony of the landlord and the tenant, I find that the tenant was personally served with the Two Month Notice on November 30, 2017, in accordance with section 88 of the *Act*. I find that the tenant vacated the subject rental property on the corrected effective date of the Two Month Notice, that being January 31, 2018 pursuant to the Two Month Notice.
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> Section 51(1) of the *Act* states that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property]* is entitled to receive from the landlord on or

before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

I find that, pursuant to section 51(1) of the *Act*, the tenant is entitled to receive from the landlord, one month's rent in the amount of $905.00. Which landlord issued the rent increase does not change the fact that a rent increase was issued, and the tenant paid a higher rent and is entitled to receive that higher rent as compensation from the landlord for issuing the Two Month Notice, pursuant to section 51(1) of the *Act*.

In the Request for Correction, the applicant re-argued her original position that she was not required to provide the tenant with one month's free rent pursuant to section 51(1) of the *Act*.

The original decision is based on the evidence submitted in the application and the testimony of both parties. An application for correction is not the appropriate forum in which to have your claim re-heard or to submit evidence that was not included in the original application.

I decline to make any correction and I confirm my original decision and order.

In my original decision I recorded the following testimony and made the following finding:

Section 38 of the Act requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security deposit.

However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on the testimony of both parties. The tenancy ended at the end of January 2018. The tenant provided both landlords with his forwarding address via e-mail on January 30, 2018. While this does not conform with the service requirements set out in section 88 of the *Act*, I find the forwarding address is sufficiently served pursuant to section 71(2) of the *Act* because both landlords confirmed receipt of the tenant's forwarding address on or around January 30, 2018. The landlords did not return the security deposit or make an application for dispute resolution to claim against it.

Over the period of this tenancy, no interest is payable on the landlord's retention of the security deposit. In accordance with section 38(6)(b) of the *Act* and Residential Tenancy

> Policy Guideline 17, I find that the tenants are entitled to double his security deposit less the cost of carpet cleaning which the tenant agreed to deduct during the hearing. The tenant is entitled to the following amount as per the below calculation:
> $450.00 (security deposit) x (2) = $900.00 – $173.88 (carpet cleaning) = $726.12.
>
> While both parties acknowledge that the tenant did not clean the subject rental property and that the tenant owed something for that cleaning, the tenant did not provide the landlord with written authorization to deduct a specific amount from his security deposit. A general acknowledgement that some amount of money is owed is not authorization to deduct a specific amount from the damage deposit.
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> While the landlord did write an e-mail to the tenant setting out the cost of carpet cleaning and the expected cost of cleaning, the tenant did not respond or provide authority to deduct a specific amount from the security deposit. Without written authorization to deduct a specific sum of money from the security deposit, the landlord was required make an application to the Residential Tenancy Branch if she wanted to retain the tenant's security deposit, which she did not do.

In the Request for Correction, the applicant stated that she did her best to fulfill the requirements of the *Act* and that she should not be penalized for accidentally contravening the *Act.* The applicant stated that she did not agree with the calculation of monies owed to the tenant after taking into account the security deposit, the doubling provision under section 38(6) of the *Act*, the carpet cleaning charges and the cleaning charges. The applicant alleged that section 38(6) of the *Act* is a penalty provision and should not be upheld.

The original decision is based on the evidence submitted in the application and the testimony of both parties. An application for correction is not the appropriate forum in which to have your claim re-heard or to submit evidence that was not included in the original application.

I decline to make any correction and I confirm my original decision and order.

In my original decision I recorded the following testimony and made the following finding:

> As the tenant is successful in this application, I find that he is entitled to recover the $100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

In the Request for Correction, the applicant disagreed with arbitrator's finding that the tenant was permitted to recover his filing fee from the applicant. The applicant alleged that since the arbitrator did not specifically inform the applicant that she might have to pay the tenant's filing fee, she did not know the case she had to meet.

The original decision is based on the evidence submitted in the application and the testimony of both parties. An application for correction is not the appropriate forum in which to have your

claim re-heard or to submit evidence that was not included in the original application. I note that the tenant's notice of dispute resolution states that he is seeking reimbursement of his filing fee. I decline to make any correction and I confirm my original decision and order.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 23, 2018

Residential Tenancy Branch